

Lecture 1. Intellectual property. Introduction.

- ▶ 1. What is intellectual property?
- ▶ 2. The role of intellectual property in socio-economic development of the country
- ▶ 3. Key notions of intellectual property management

- ▶ The main **objective** of this lecture is to understand the basics of intellectual property management.

What is Intellectual Property?

- ▶ **Intellectual property (IP)** refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- ▶ IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

Evolution of Intellectual Property

- ▶ The foundations of Intellectual Property concept has been around since the development of civilization.
- ▶ Many sources pin the origins of Intellectual Property rights to the year 1421 when the world's first modern patent was awarded to an Italian inventor. However, according to Former Lord Justice of Appeal Robin Jacob, the history of Intellectual Property law can be traced back to as early as **600 BCE**.
- ▶ Already in **ancient Greece** there were rules, in many respects similar to the modern right assigned to the author to the **inviolability of the work**: the texts of the tragedies were subject to mandatory preservation in order to control compliance performance performed on the stage to the true author's intention. The works of Aeschylus, Sophocles and Euripides were to be brought to the public **in undistorted form**. The fee as a form of payment for creative labour, the features of the ownership of works of art were already known to **Roman law**. However, in general, the legal registration of the "economic side" of creativity for a long time was not given much importance, since the need to trade the results of intellectual activity arose relatively late.

- ▶ With the invention of the printing press (in 1448), the appearance of the first newspapers and magazines (the first scientific journal began to be published in France in 1665), the "Gutenberg galaxy" was discovered for mankind. It became possible to put "novels and poems" into economic circulation, the opportunity to trade in poems and inventions.
- ▶ At the same time, it became necessary to consolidate "private ownership" of the achievements of art and technical innovations. After the invention of the printing press and the emergence of manufactories, any manuscript, and then any other material carrier of work, **could be quickly and relatively cheaply reproduced**, and technical innovations began to bring tangible advantages over competitors and to be introduced into production much faster.
- ▶ The publication of books and the introduction of inventions have always required the **expenditure of maximum funds and efforts** from the one who did it first. He also had to pay for the work of the authors. **Competitors did not bear the costs** associated with the preparatory stage and could offer the same product to the public at lower prices. **Before patent law, anyone could benefit from an invention made by another.**

- ▶ As a result, neither the creator of the work, nor the publisher, nor the creator of technical innovations, nor the one who paid for his work, often did not receive any economic benefits from their activities. **This situation was a serious brake on technological progress** and prevented the spread of cultural values. It was necessary to ensure that each interested person could realize their material interests through the market mechanism and appropriate law.
- ▶ As soon as commercial opportunities for the exploitation of the results of intellectual activity opened up with the development of civilization, there was an urgent need for the state to develop regulatory, coordinating, legislative functions in this area, to ensure domestic protection and international legal protection of "intellectual rights". The most important task was to clearly define what belongs to one person and what to another; who is entitled to what. **Only the state could provide a solution to this problem.**

- ▶ The modern concept of intellectual property developed in England in the 17th and 18th centuries. The term "intellectual property" began to be used in the 19th century, though it was not until the late 20th century that intellectual property became commonplace in the majority of the world's legal systems.
- ▶ **Intellectual property (IP)** refers to creations of the mind: inventions; literary and artistic works; and symbols, images, names and logos used in commerce.
- ▶ There are many types of intellectual property, and some countries recognize more than others. The most well-known types are **copyrights, patents, trademarks, and trade secrets.**



Kazakhstan's legislative base on IP:

- ▶ **The Constitution** of the Republic of Kazakhstan (adopted on August 30, 1995 at the republican referendum)
- ▶ **Civil Code** of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No 409 dated July 1, 1999
- ▶ **On copyright and the related rights.** The Law of the Republic of Kazakhstan dated 10 June, 1996 No 6.
- ▶ **Patent law** of the Republic of Kazakhstan. The Law of the Republic of Kazakhstan of 16 July 1999 No. 427.
- ▶ **On Trademarks, Service Marks and Appellation of Origin.** Law of the Republic of Kazakhstan of July 26, 1999 No. 456.
- ▶ **On Protection of Selection Achievements.** The Law of the Republic of Kazakhstan dated 13 July 1999 No. 422-I.
- ▶ **On the legal protection of integrated circuits topologies.** Law of the Republic of Kazakhstan of June 29, 2001 N 217
- ▶ **On informatization.** Law of the Republic of Kazakhstan dated 24 November 2015 № 418-V.

▶ **International treaties** have helped to harmonize patent, trademark, and copyright laws around the world. Most countries now have patent, trademark, and copyright laws of some form, and in some instances protection can be applied for in multiple countries simultaneously.

- The Paris Convention for the Protection of Industrial Property
- The Berne Convention for the Protection of Literary and Artistic Works
- The WIPO Copyright Treaty (WCT)
- The Patent Cooperation Treaty (PCT)
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
- The Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement
- The Hague Agreement Concerning the International Deposit of Industrial Designs
- The Trademark Law Treaty (TLT)
- The Patent Law Treaty (PLT)
- The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (“the Rome Convention”)
- The WIPO Performances and Phonograms Treaty (WPPT)
- The International Convention for the Protection of New Varieties of Plants
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) and WIPO-WTO Cooperation

Civil Code of the Republic of Kazakhstan (Special part)

Code of the Republic of Kazakhstan No 409 dated July 1, 1999

Section 5. Intellectual property right. Chapter 49. General provisions

Article 961. Objects of Intellectual Property Right

1. The objects of intellectual property right shall be defined as:

- 1) results of intellectual creative activity;
- 2) means of individualization of the participants of civil transactions, goods, works or services.

2. The results of intellectual creative activity are:

- 1) scientific, literary and artistic works;
- 2) performances, production, phonograms and transmission of broadcasting and cable broadcasting;
- 3) inventions, utility models, industrial designs;
- 4) breeding achievements;
- 5) integrated circuit layout-designs;
- 6) undisclosed information, including production secrets (know-how);
- 7) other results of intellectual creative activity in the cases, provided by this Code or other legislative

acts.

3. Means of individualization of the participants of civil transactions, goods, works and services are:

- 1) brand names;
- 2) trademarks (service marks);
- 3) appellation of goods origin (indication of origin);
- 4) other means of individualization of other participants of civil transactions, goods and services in the

cases, provided by this Code and other legislative acts.

Article 962. Grounds for Intellectual Property Rights

Intellectual property rights **shall arise by virtue of their creation or as a result of legal protection** by the authorized state body in the cases and in the procedure provided by this Code and other legislative acts.

Article 963. Personal Intellectual Non-Property and Property Rights

1. The authors of the results of intellectual creative activity shall possess personal **non-property and property rights** in respect of these results.

The author shall enjoy personal non-property rights, regardless of his/her property rights, and shall reserve them in case of transfer of his/her property rights to the results of intellectual creative activity to another person.

2. Owners of the right to the means of individualization of the participants in civil transactions, goods or services (hereinafter - the means of individualization) shall enjoy the property rights in respect of these means.

Article 964. Exclusive Rights to Objects of Intellectual Property

1. The property right of the owner to use an object of intellectual property at his/her own discretion by any means shall be recognized as **exclusive rights** to results of intellectual creative activity or means of individualization.

Using the object of exclusive rights by other persons shall be carried out **with the consent of the holder** of the right.

2. The holder of the exclusive rights to intellectual property shall have the **right to transfer this right to another person in whole or in part, permit to use an object of intellectual property and dispose of it in any other way**, unless it does not conflict with the rules of this Code and other legislative acts.

3. Limitations of exclusive rights, recognition of these rights as invalid and their termination (cancellation) shall be permitted only within the procedure prescribed by this Code and other legislative acts.

Article 965. Transfer of Exclusive Rights to Another Person

1. Exclusive rights to intellectual property, unless otherwise is provided by this Code or other legislative acts, **can be transferred by their holder in whole or in part under the contract to another person, as well as inherited by way of universal succession and as a result of reorganization of the legal entity - holder of the right.**

Transfer of exclusive rights shall not restrict the right of authorship and other non-property rights. Terms of the contract on transfer or limitation of such rights shall be null and void.

2. The rules of the license contract shall be applied to the contract, which is providing the transfer of exclusive rights to another person during its validity for a limited period (Article 966 of this Code).

Course structure

The purpose of this discipline is a practical analysis of the current Kazakhstani legislation on the protection of intellectual property objects, consideration of their commercialization, protection of the interests of copyright holders, international cooperation in this area, as well as understanding by MS students of the role and importance of intellectual property as an effective resource for economic development.

As a result of studying the discipline, the student will be able to:

- LO 1.** To define theoretical and methodological foundations of intellectual property
- LO 2.** To be able to analyze and use the legal, economic and organizational aspects of intellectual property management
- LO 3.** To acquire skills of managing the creation and use of intellectual property



Syllabus

► **Literature:**

1. Lionel Bently, Brad Sherman. Intellectual Property Law 4th Edition. Oxford University Press; 4th edition (December 10, 2014), 1296 pages
2. Commercialization and legal protection of the results of intellectual activity: textbook / ed. A.N. Soldatova, S.L. Minkov. - Tomsk: Tomsk State University, 2011. - 334 p.
3. Kudashov V.I. Intellectual property: protection and realization of rights, management: Textbook / V.I. Kudashov. - Minsk: BNTU, 2004. - 321 p. Dyzhova A.A. Fundamentals of intellectual property management: Lecture notes for students of all specialties. - Mogilev: UO MGUP, 2007. - 129 p.
4. Melissa Schilling: Strategic Management of Technological Innovation, McGrawHill, International Edition 2017.
5. Tidd, J., Bessant, J.R. 2014. Strategic innovation management. Wiley, Hoboken.

Useful links

- ▶ <https://www.wipo.int/portal/en/index.html>
- ▶ <https://www.kazpatent.kz/en>
- ▶ <https://gosreestr.kazpatent.kz/Contract>
- ▶ https://adilet.zan.kz/eng/docs/K990000409_
- ▶ https://adilet.zan.kz/eng/docs/Z990000427_
- ▶ https://adilet.zan.kz/eng/docs/Z960000006_

Thank you for your attention!